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INTERNATIONAL PLATFORM OF JURISTS FOR EAST TIMOR

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APPEAL TO THE SECRETARY-GENERAL OF THE UNITED NATIONS FOR THE UNCONDITIONAL RELEASE OF XANANA GUSMÃO AND THE OTHER TIMORESE POLITICAL PRISONERS

His Excellency Dr. Boutros Boutros-Ghali
Secretary-General of the United Nations

Your Excellency,

One of the most worrying consequences of the invasion and illegal occupation of the territory of East Timor by the Indonesian armed forces, in addition to the massacres, extrajudicial executions, 'disappearances', torture and all kind of other human rights violations, has been the arrest, ill-treatment under detention, trial under Indonesian law and conviction to heavy sentences of East Timorese who have resisted the alien rule in their country. Among them is Xanana Gusmão, the leader of the East Timorese armed resistance. Ma'Huno, his successor, has been arrested but not put on trial. Others, like Gregório da Cunha Saldanha, Francisco Miranda Branco, Jacinto Raimundo Alves, Filomeno da Silva Ferreira, Bonifácio Magno, Carlos de Santos Lemos, Juvêncio de Jesus Martins, Saturnino da Costa Belo, João Freitas da Câmara, Fernando de Araújo, Virgílio Guterres da Silva and Agapito Cardoso have been arrested and convicted only for upholding the right to peaceful demonstration in support of the inalienable right to self-determination of peoples.

The International Platform of Jurists for East Timor has written several letters to you on this subject: on 18 May 1992, referring to the imprisonment of thirteen East Timorese in Dili and Jakarta in the aftermath of the Santa Cruz massacre of November 1991 and requesting the exercise of your good offices for their protection; on 20 November 1992, the day Xanana Gusmão was arrested, conveying its deep concern regarding his safety and urging you to intervene in order to obtain his release; on 5 December 1992, together with the London-based Catholic Institute for International Relations, reiterating that appeal; on 18 May 1993, denouncing the illegality of Xanana's trial; on 24 May 1993, protesting against the life sentence imposed to him and informing you about the arrest and torture of another East Timorese, Rui António da Cruz.

Amnesty International has issued many documents which totally or partly refer to the arrest, ill-treatment and unfair trials of these East Timorese and has protested strongly against the violation of their internationally protected rights by the Indonesian authorities. Since 1991 alone, one can mention three Statements to the United Nations Special Committee on Decolonization and fourteen press statements and human rights reports. Concerned with the fate of the detainees, Amnesty has initiated several urgent actions.

The International Committee of the Red Cross was obliged in May 1993 to suspend once again the prisons visit programme in East Timor, because all the conditions of the ICRC had not been met. In September 1993 ICRC officials announced that the process of visiting detainees had been resumed, but that they had not been able to do it as regularly and as completely as they wanted. We remind you that the ICRC

was prevented by the Indonesian authorities from entering the territory from 1975 to 1979; in that period, some 200,000 people, one third of the original population, were killed by the Indonesian army, through weapons or by the starvation which accompanied the illegal use of force.

Other NGOs, like Asia Watch, have published reports denouncing the arrest, ill-treatment and trials of East Timorese. The International Commission of Jurists succeeded in sending an observer to one of the sessions of Xanana's trial. Last November, in Geneva, the ICJ issued a report which consubstantiates the observer's findings: that in several respects the trial process had violated the rights of the accused, that it had not been in conformity with international standards of fair trial procedure and that it had even breached the provisions of the Indonesian Code of Criminal Procedure.

The European Parliament has also expressed several times its concern about human rights violations in East Timor. The same concern has been frequently expressed in the United States Senate and in the United States House of Representatives. And the United Nations too, through the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities, has strongly criticized the Government of Indonesia in March and August 1993.

We are of course sure that you have been following the situation of Xanana Gusmão and the other Timorese political prisoners closely and that you are doing everything possible to ensure their safety and physical well-being, as well their treatment in accordance with internationally acceptable legal standards and procedures.

But meanwhile new facts have come to light. The International Commission of Jurists received at the end of December two letters smuggled out from the prison from East Timorese. One was from Xanana Gusmão, at the Cipinang prison in Jakarta; the other from Francisco Miranda Branco, Jacinto Raimundo Alves, Gregório da Cunha Saldanha, Filomeno da Silva Ferreira, Juvêncio de Jesus Martins and Saturnino da Costa Belo, at the Central Prison in Dili. In his letter, Xanana Gusmao explains how the Indonesian military have rejected his choice for a legal counsel from the YLBHI (Indonesian Legal Aid Foundation) and how they have forced him to accept a lawyer who is under their control, and whose deceitful performance he further describes in detail. He then reaffirms his East Timorese and Portuguese citizenship, asks for his trial to be annulled and demands the intervention of a Portuguese counsel, assisted by lawyers of the YLBHI. In their letter, the other six East Timorese prisoners denounce the conditions of the questioning which led to their trials which was under physical and phycological duress and without the assistance of a counsel. They further denounce the irregularities of their trials: they also were not allowed to chose their own counsels, but were imposed lawyers upon them by the military; they were put under strong pressure to renounce the opportunity to elaborate their defense and to confess their guilt; independent observers were in most cases prevented from entering the courtroom; the detainees were used routinely as prosecution witnesses and threatened before giving their testimony. They also ask for their trials to be annulled and demand the International Commission of Jurists and IPJET's intervention.

We know from reliable sources that the situation concerning the prisoners has deteriorated after these letters were made public. In response, and under the ludicrous justification that Xanana Gusmão had "tarnished the good image of Indonesia abroad" the Indonesian authorities have immediately barred relatives and human rights representatives from visiting him. In Dili, the other East Timorese prisoners have also been put under strong pressure.

With all these facts in mind, the undersigned, jurists, statespersons and public figures from many countries from all continents, join with the International Platform of Jurists for East Timor in making the following appeal:

Considering that the Indonesian invasion and continuing occupation of East Timor constitute an illegitimate use of force and a breach of territorial integrity contrary to the principles of the UN Charter, acts of aggression and crimes against international peace according to the General Assembly Definition of Aggression, a denial of the inalienable right of the people of East Timor to self-determination and a clear violation of the Declaration on the Granting of Independence to Colonial Countries and Peoples;

Considering that International customary law, reiterated in one of the principles of the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States, determines that no territorial acquisition resulting from the use of force shall be recognised as legal;

Considering that General Assembly Resolution 31/53, of 1 December 1976, reaffirmed in its paragraph 1 "the inalienable right of the people of East Timor to self-determination and independence and the legitimacy of their struggle to achieve that right" and that Xanana Gusmão and the other Timorese political prisoners were engaged in that legitimate struggle at the time of their capture;

Considering that in any case the IVth Geneva Convention of 1949 applies to Indonesia's occupation of East Timor, since Indonesia is a Party to the Convention;

Considering that the trials of Xanana Gusmão and the other Timorese political prisoners, flowing from the annexation of East Timor and the imposition of Indonesian criminal laws upon the territory, were thus illegal acts of the occupying power;

Considering that Xanana Gusmão, after his arrest, was held incommunicado, was removed from the territory of East Timor and was subjected to physical and psychological torture, and that the same happened to many of the other Timorese political prisoners, contrary to the international prohibition against torture;

Considering that Xanana Gusmão and the other Timorese political prisoners were not allowed to freely choose their legal counsel, that access to their trial was often, and particularly at important moments, denied to international observers, that prosecution witnesses were intimidated and that those who did not act according to the wishes of the prosecutor were removed from the courtroom;

Considering that Xanana Gusmão was not allowed to read his defense statement on the ground that it was "irrelevant to the case";

Considering that the treatment of Xanana Gusmão and the other Timorese political prisoners and the way their trials have been conducted constitute violations of international legal standards and even of the Indonesian Criminal Procedures Code itself;

Deeply concerned regarding the safety of Xanana Gusmão and the other East Timorese detainees,

We ask you to use your good offices to emphasize to the Indonesian Government that these matters constitute grave breaches of Indonesia's international obligations, and that the individuals responsible for them are liable under International Law;

We urge you to intervene and exercise your influence in order to obtain the immediate and unconditional release of Xanana Gusmão and of all other detained East Timorese.

Yours sincerely,